

¹ 5 U.S.C. § 8101 *et seq.*

repetitive work duties including repetitive casing of mail.² She noted that she first became aware of her condition on February 1, 2011 and of its relationship to her federal employment on March 1, 2011. OWCP assigned the claim OWCP File No. xxxxxx042. On June 10, 2014 it accepted the claim for right complete rotator cuff rupture and right carpal tunnel syndrome. Appellant underwent OWCP-authorized right shoulder arthroscopy with repair of the rotator cuff on July 24, 2014.

On August 4 and 11, 2014 appellant filed claims for wage-loss compensation (Form CA-7) for disability from July 12 to August 8, 2014. In the August 4, 2014 Form CA-7, she listed her son, who was born on December 31, 1979, and nephew, who was born on August 15, 2000, as dependents.

OWCP paid appellant wage-loss compensation on the supplemental rolls for temporary total disability from work for the period July 12 through August 8, 2014 at the basic statutory two-thirds pay rate.

In an August 21, 2014 letter, OWCP advised appellant that, if her son was incapable of self-support, she should submit a medical report describing his mental or physical disability. It also advised her that she was only entitled to compensation for her nephew if she had formally adopted him. OWCP requested that appellant submit documentation verifying the adoption.

Appellant subsequently filed additional Form CA-7 claims for wage-loss compensation for disability from August 9 through November 14, 2014. OWCP paid her wage-loss compensation on the supplemental rolls for temporary total disability from work for the period August 9 through November 15, 2014 at the basic two-thirds pay rate.

On February 17, 2015 appellant returned to work in a modified carrier technician position. Subsequently, she filed Form CA-7 claims for wage-loss compensation for intermittent disability from February 17, 2015 through March 5, 2016.

OWCP continued to pay appellant wage-loss compensation on the supplemental rolls for temporary total disability from work for the period February 17, 2015 through January 14, 2016 due to work restrictions at the basic two-thirds pay rate.

By decision dated May 11, 2016, OWCP denied appellant's claim for a recurrence of disability from January 19 through March 5, 2016. It found that the medical evidence of record was insufficient to establish that she was disabled from work due to a material change or worsening of her accepted employment-related conditions.

On May 26, 2016 appellant requested reconsideration.

² Appellant subsequently filed a traumatic injury claim (Form CA-1) under OWCP File No. xxxxxx124, alleging that on September 16, 2016 she sustained an injury when a fence fell on her while in the performance of duty. OWCP accepted that claim for strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm; strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, right arm, and strain of unspecified muscle, fascia, and tendon at neck level. Appellant also filed a claim for an injury under OWCP File No. xxxxxx058. OWCP has not administratively combined these claims with the instant claim.

By decision dated June 2, 2016, OWCP denied appellant's request for reconsideration of the merits of her claim, pursuant to 5 U.S.C. § 8128(a), finding that it neither raised substantial legal questions, nor included new or relevant evidence.

OWCP received a letters of guardianship form from the Superior Court of California, County of Riverside dated July 14, 2016, appointing appellant as the legal guardian of her nephew. The letters of guardianship indicated that appellant's nephew was born on December 28, 2002. An August 30, 2016 memorandum of telephone call (Form CA-110) indicated that OWCP confirmed with the California court that appellant was granted guardianship of her nephew by the July 14, 2016 letters of guardianship.

Thereafter, appellant filed additional Form CA-7 claims for wage-loss compensation for intermittent disability from April 7 through 28, 2020 and May 5 through 14, 2020. OWCP paid her wage-loss compensation on the supplemental rolls for temporary total disability due to absences to attend physical therapy treatments during the periods April 7 through 30, 2020 and May 5 through 14, 2020 at the augmented 75 percent rate.

On May 27 and June 17, 2020 appellant requested that OWCP change her dependent status because she had changed it in her other OWCP claims.

By decision dated September 15, 2020, OWCP found that appellant was not entitled to augmented compensation during the period of her disability from work. It explained that, although she was the guardian of her nephew, he was not considered a "child" as defined under 5 U.S.C. § 8101(9) and, thus, he was not an eligible dependent as defined under 5 U.S.C. § 8110.

LEGAL PRECEDENT

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from a personal injury sustained while in the performance of duty.³ If the disability is total, the United States shall pay the employee during the period of total disability the basic compensation rate of 66 2/3 percent of her monthly pay. A disabled employee is entitled to an augmented compensation rate of 75 percent if he or she has one or more dependents.⁴

Section 8110(a) of FECA provides that a dependent includes an unmarried child who, while living with the employee or receiving regular contributions from the employee toward his or her support, is either under 18 years of age or over 18 years of age and incapable of self-support due to physical or mental disability.⁵ A child is also considered a dependent if he or she is an unmarried student under 23 years of age who has not completed four years of education beyond

³ 5 U.S.C. § 8102(a).

⁴ *R.G.*, Docket No. 18-1251 (issued November 26, 2019); *O.R.*, 59 ECAB 432, 436 (2008); *id.* at §§ 8105(a) and 8110(b).

⁵ *Id.* at § 8110(a).

the high school level and is currently pursuing a full-time course of study at a qualifying college, university, or training program.⁶

Pursuant to section 8101(9) of FECA the definition of a child includes stepchildren, adopted children, and posthumous children, but does not include married children.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented compensation rate.

The Board notes that a nephew is not recognized as an eligible dependent for purposes of augmented compensation. As noted, pursuant to section 8101(9) of FECA, the term child may include stepchildren, adopted children, or posthumous children. The Board has specifically held that, when a claimant has legal guardianship over a nephew, this does not qualify the child as a dependent if the recipient of compensation has not adopted the child.⁸ Although appellant's nephew may be living with her and she may be his legal guardian, appellant has not legally adopted her nephew. Therefore, he does not qualify as an eligible dependent.⁹

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her wage-loss compensation should have been paid at an augmented compensation rate.

⁶ *R.G.*, *supra* note 4; *see also E.G.*, 59 ECAB 599, 603 n.10 (2008).

⁷ 5 U.S.C. § 8101(9).

⁸ *Aretha Hudson*, 28 ECAB 423 (1988).

⁹ *See C.V.*, Docket No. 13-2108 (issued June 17, 2014).

ORDER

IT IS HEREBY ORDERED THAT the September 15, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 24, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board